

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL B. MIRABAL,

Petitioner,

v.

ROBERT AYERS, Warden,

Respondent.

No. C 08-4038 MMC (PR)

ORDER TO SHOW CAUSE

On August 25, 2008, petitioner, a California prisoner incarcerated at San Quentin State Prison and proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the reversal, by Governor Arnold Schwarzenegger (“Governor”), of a grant of parole by the California Board of Parole Hearings (“Board”). Petitioner has paid the filing fee.

BACKGROUND

In 1981, in the Superior Court of Los Angeles County, petitioner pleaded guilty to second degree murder. He was sentenced to a term of fifteen years to life in state prison. In December 2005, the Board found petitioner suitable for parole and set a release date. On May 26, 2006, the Governor reversed the grant of parole. On February 27, 2008, the California Supreme Court denied petitioner’s state habeas corpus petition challenging the Governor’s reversal.

DISCUSSION

A. Standard of Review

This Court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody

1 in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a);
2 Rose v. Hodges, 423 U.S. 19, 21 (1975). A district court shall “award the writ or issue an
3 order directing the respondent to show cause why the writ should not be granted, unless it
4 appears from the application that the applicant or person detained is not entitled thereto.”
5 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the
6 petition are vague or conclusory, palpably incredible, or patently frivolous or false. See
7 Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (quoting Blackledge v. Allison,
8 431 U.S. 63, 75-76 (1977)).

9 B. Petitioner’s Claims

10 Petitioner claims the Governor’s reversal of the Board’s decision to grant parole
11 violated petitioner’s federal constitutional right to due process because the Governor’s
12 determination that petitioner’s release would pose an unreasonable risk to public safety was
13 not supported by some evidence, and the Governor relied solely on the circumstances of the
14 commitment offense to justify the denial of parole. Liberally construed, petitioner’s claims
15 are cognizable.

16 **CONCLUSION**

17 For the reasons stated above, the Court orders as follows:

- 18 1. The Clerk shall serve by certified mail a copy of this order and the petition, along
19 with the exhibits lodged in support thereof, upon respondent and respondent’s counsel, the
20 Attorney General for the State of California. The Clerk shall also serve a copy of this order
21 on petitioner.
- 22 2. Respondent shall file with the Court and serve on petitioner, within **ninety (90)**
23 days of the date this order is filed, an answer conforming in all respects to Rule 5 of the
24 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not
25 be granted based on petitioner’s cognizable claims. Respondent shall file with the answer
26 and serve on petitioner a copy of all portions of the state trial record that have been
27 transcribed previously and that are relevant to a determination of the issues presented by the
28 petition.

1 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with
2 the Court and serving it on respondent within **thirty (30)** days of the date the answer is filed.

3 3. In lieu of an answer, respondent may file, within **ninety (90)** days of the date this
4 order is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory
5 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files
6 such a motion, petitioner shall file with the Court and serve on respondent an opposition or
7 statement of non-opposition within **thirty (30)** days of the date the motion is filed, and
8 respondent shall file with the Court and serve on petitioner a reply within **fifteen (15)** days of
9 the date any opposition is filed.


10 4. Petitioner is reminded that all communications with the Court must be served on
11 respondent by mailing a true copy of the document to respondent's counsel.

12 5. It is petitioner's responsibility to prosecute this case. Petitioner must keep the
13 Court and respondent informed of any change of address and must comply with the Court's
14 orders in a timely fashion. Failure to do so may result in the dismissal of this action for
15 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

16 6. Upon a showing of good cause, requests for a reasonable extension of time will be
17 granted as long as they are filed on or before the deadline they seek to extend.

18 IT IS SO ORDERED.

19 DATED: February 12, 2009

20 
21 MAXINE M. CHESNEY
22 United States District Judge
23
24
25
26
27
28